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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,572	04/27/2006	Manfred Aulbach	23569	6753

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
01/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/577,572	AULBACH, MANFRED	
	Examiner	Art Unit	
	Cheryl Juska	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *4 and 5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *4 and 5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed October 24, 2008, has been entered. Claims 1-3 have been cancelled and replaced with new claims 4 and 5. The substitute specification and new abstract have also been entered.

2. Said amendment renders moot the 112, 1st and 2nd rejections set forth in sections 3-13 of the last Office Action (Non-Final Rejection mailed 06/24/08). The cancellation of claims 1-3 also renders moot the prior art rejections set forth in section 17 of the last Office Action. Additionally, said amendment is sufficient to withdraw the objection to the specification as set forth in section 1 of the last Office Action. Furthermore, it is noted that an Information Disclosure Statement (IDS) has been filed on October 24, 2008, in response to section 2 of the last Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification as

originally filed does not enable the hydrodynamic water needle-punching (hydroentanglement) of a hot melt (thermoplastic) film. While one skilled in the art would understand how to make and use a backing support layer hydroentangled with a layer of hot melt powder or fusible staple fibers, one does not readily understand how to make and use a backing support layer hydroentangled with a film layer. [Note claims 1-3 were previously rejected for this matter in section 4 of the last Office Action.]

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 5 recites the limitation "the backing support layer" in line 3 of the claim and the limitation "the yarns exposed there" in line 4 of the claim. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE-A 100 56 180 issued to Hammerschmidt.

New claims 4 and 5 are rejected for reasons analogous to those presented in the rejection of claims 1-3 over the cited DE '180 reference as set forth in section 17 of the last Office Action.

Applicant traverses the rejection by asserting that the reference, based upon applicant's translation of claims 1 and 8 of said reference, does not teach or suggest fusing the intermediate layer prior to applying a nonwoven (secondary) backing (Amendment, pages 6-8). This argument is unpersuasive. First, it is agreed that the reference does not explicitly teach the presently claimed invention. Note the rejection is not an anticipation rejection but rather an obviousness rejection. Secondly, while the reference does not explicitly suggest fusing the intermediate layer prior to applying the nonwoven backing, the claims are still rendered obvious.

Specifically, the cited DE '180 reference teaches hydroentangling an intermediate layer and a secondary nonwoven layer to the back of the a carpet support layer (i.e., tufted primary backing) with 1 to 3 hydroentanglement passes. Thus, the reference teaches the presently claimed invention with the exception that the first hydroentanglement passes occurs prior to application of the nonwoven secondary backing. However, it would have been readily obvious to one skilled in the art to employ separate the multiple hydroentanglement passes with the addition of said secondary backing. In doing so, the first hydroentanglement pass would focus on securing or mixing the intermediate layer with the tufted primary backing, while the second pass would focus on integrating the nonwoven secondary backing into the carpet. Such modification of the DE '180 reference would have yielded predicable results to one of ordinary skill in the art at the time of the invention.

Additionally, it would have been obvious to one of ordinary skill in the art to apply the heat treatment step in between the two hydroentanglement passes. Specifically, the first hydroentanglement pass and subsequent heating step would secure the pile yarns into the primary backing before the addition of the secondary backing, which provides a finished backing as well as further enhancing the anchoring of the pile yarns. Such a modification of the DE '180 reference would have yielded predicable results to one of ordinary skill in the art at the time of the invention. Therefore, applicant's arguments are found unpersuasive and claims 4 and 5 are rejected as being obvious over the prior art.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794

cj
January 29, 2009